



Docket No.: 10-006

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : **EXPEDITED PROCEDURE UNDER**
: **37 CFR §1.116**
TAYLOR et al. :
:
Serial No.: 10/725,511 : Group Art Unit: 2141
:
Filed: December 3, 2003 : Examiner: GILLIS, Brian J

For: ARRANGEMENT IN A MULTI-HONED TRANSPORT ENDPOINT FOR
SELECTING A SOURCE ADDRESS BASED ON SOURCE-DESTINATION
ADDRESS PAIR METRICS

RESPONSE AFTER FINAL

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Final Official Action mailed April 18, 2008, the following comments are submitted.

Reconsideration and allowance of the above-referenced application are respectfully requested. Claims 1, 9, 17, and 25 are canceled. Claims 2-8, 10-16, 18-24, and 26-32 are pending in the application.

Claims 2-8, 10-16, 18-24, and 26-32 stand rejected under 35 USC §102(e) in view of commonly-assigned U.S. Patent No. 7,277,954 to Stewart. This rejection is strenuously traversed, as the rejection fails to demonstrate that Stewart discloses each and every element of the claim, as

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arranged in the claim.¹ In particular, the rejection demonstrates a blatant disregard for the claimed feature of initiating a metric for each source-destination address pair by incrementing a corresponding assigned counter in response to a determined absence of an acknowledgement, and ***decrementing the corresponding assigned counter***, until reaching a zero value, for each acknowledgement detected within the corresponding prescribed time interval.

In particular, each of the independent claims 2, 10, 18, and 26 specify that the initiating includes, for each source-destination address pair: ***incrementing a corresponding assigned counter in response to a determined absence*** of an acknowledgement within a prescribed time interval of sending a data frame via the corresponding source-destination address pair; and ***decrementing the corresponding assigned counter, until reaching a zero value, for each acknowledgement detected within the corresponding prescribed time interval***.

The broadest reasonable interpretation cannot be inconsistent with the specification, which illustrates in Figure 3 a counter 68 assigned to each corresponding source-destination address pair: the counters 68 also are identified at page 8, lines 1-2 as “missed acknowledgment counters (i.e., failure counters). Each counter 68 is incremented if an acknowledgement for the corresponding source-destination address pair is not received within the prescribed interval (e.g., step 108 of Fig. 4; 124 of Fig. 5), and decremented if the corresponding acknowledgement is received within the prescribed interval (e.g., step 110 of Fig. 4, step 126 of Fig. 5) (see also page 8, lines 5-14). Hence, maintaining counters 68 of unsuccessful transmissions for each address pair enables the accumulation of real-time information about the availability of data flows through the network based on source-destination address pairs, enabling the endpoint to quantify the relative unreliability of

¹See MPEP 2131. “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). Hence, it is not sufficient that a single prior art reference discloses each element that is claimed, but the reference also must disclose that the elements are arranged as in the claims under review. *It re Bond*, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990) (citing *Lindemann Maschinenfabrik GmbH*).

source-destination pairs and identify the source-destination pair having the highest successful data transfer rate (see, e.g., page 9, lines 13-18; page 10, lines 1-7).

The rejection per se fails to demonstrate that Stewart discloses, for each source-destination address pair, the claimed *incrementing* the counter in response to a determined absence of an acknowledgement within a prescribed time interval, *and decrementing* the counter, until reaching a zero value, in response to each acknowledgement detected within the corresponding prescribed time interval.

In fact, the rejection fails to even identify any decrementing that is performed by Stewart. The rejection simply alleges, as the purported disclosure of the claimed “*decrementing the counter*” that “Stewart et al. shows a table is updated when an acknowledgement is received (column 8, lines 26-40)” (see Office Action at page 3, lines 18-20; page 6, lines 11-13; page 9, lines 6-7; page 11, lines 18-19). In fact, the Response to Arguments parrots the same language at page 13, lines 13-16:

Stewart et al. shows the sequence number is incremented for each acknowledgment message that is not responded to and a table is updated in response to each acknowledgment message received or not received [sic] (column 8, lines 26-61).

No Disclosure of the Claimed Incrementing

The disclosed sequence number is not a disclosure of the claimed “incrementing a corresponding assigned *counter* in response to *a determined absence* of an acknowledgement”, as claimed. Stewart et al. describes that the “sequence number” is to keep track of heartbeat messages, where each heartbeat message is associated with a sequence number (see, e.g., col. 2, lines 5-9 and 61-65; col. 8, lines 33-39; col. 8, line 57 to col. 9, line 3; col. 9, lines 53-64; col. 10, line 53 to col. 11, line 19). For example, column 8, lines 33-40 specifically describe that a sequence number is used to identify a specific heartbeat message and heartbeat-ACK messages received in response thereto:

Initially, as shown at 702, the endpoint device determines whether it is time to send a new heartbeat message. According to a specific embodiment, each heartbeat message which is generated may include a different associated sequence number or other information used to identify that specific heartbeat message and any heartbeat-ACK messages which are received in response to that specific heartbeat message.

Column 10, lines 53-58 further illustrate that the sequence numbers are stored in a table to enable the tracking of the associated heartbeat messages:

As illustrated in the example of FIG. 8, each of the received HB-ACK messages corresponding to entries 811a and 811b are associated with **the same sequence number** (i.e., sequence number=n) which, according to a specific embodiment, corresponds to the sequence number of the ALL_DEST heartbeat message received at Host Z.

Further, Stewart et al. is replete with examples where the sequence number can be implemented using a timestamp that uniquely identifies the transmitted heartbeat message, enabling the incrementing of the sequence number **automatically** without responding to any input or stimulus (see, e.g., col. 8, line 65 to col. 9, line 3; col. 9, lines 53-64).

Further, Fig. 8 illustrates a table 800 that includes two entries 811a and 811b that are associated with the **same sequence number** (value “n”) (col. 10, lines 53-58), and two entries 813a and 813b that are associated with the **same sequence number** (value “m”) (col. 11, lines 17-20). These table entries 811a and 811b are updated in response to host A (Fig. 1) receiving heartbeat acknowledgement messages generated in response to the host Z receiving the heartbeat message bearing the sequence number=n (col. 10, lines 53-58).

Hence, Stewart et al. uses the sequence number to keep track of heartbeat messages, where each heartbeat message generated includes a **different** sequence number that is incremented **in response to determining whether a new heartbeat message should be transmitted** (see, e.g., col. 8, lines 33-40 quoted *supra*). In fact, Stewart et al. states that the sequence number can correspond to a timestamp value that is incremented **automatically**. Hence, Stewart et al. does not disclose incrementing a ***counter in response to a determined absence of an acknowledgement within a prescribed time interval***, as claimed.

For this reason alone the §102 rejection must be withdrawn because the rejection fails to demonstrate that Stewart et al. discloses “the ***identical*** invention” as is contained in the claim. *Cf. Richardson v. Suzuki Motor Co.*, 9 USPQ2d at 1920.

No Disclosure of the Claimed Decrementing

Stewart et al. provides no reference to the term “decrement”, “decrementing” or even “decrease”. In fact, the rejection fails to provide any reference that Stewart et al. discloses the claimed “decrementing the *corresponding assigned counter* ... for each acknowledgement detected”. To the contrary, the rejection simply states that “a table is updated”. However, the vague recital of “a table is updated” is not a disclosure of *decrementing a counter for each acknowledgement detected*, as claimed. The claimed decrementing of a counter requires *decrementing of a counter*.

As demonstrated *supra*, the sequence number is not a counter that is incremented in response to a determined absence of an acknowledgement; to the contrary, Stewart et al. increments the sequence number in response to determining that it is time to send a new heartbeat message. Hence, the rejection fails to demonstrate Stewart et al. discloses a counter.

Further, the rejection fails to demonstrate Stewart et al. *decrements* any counter, let alone the *corresponding counter assigned to the source-destination address pairs*, or *for each acknowledgement detected*, as claimed.

For this reason alone the §102 rejection must be withdrawn because the rejection fails to demonstrate that Stewart et al. discloses “the *identical* invention” as is contained in the claim. *Cf. Richardson v. Suzuki Motor Co.*, 9 USPQ2d at 1920.

Hence, the §102 rejection should be withdrawn because it fails to demonstrate that the applied reference discloses each and every element of the claim. As specified in MPEP §2131: “‘A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference’ *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... ‘The identical invention must be shown in as complete detail as is contained in the ... claim.’ *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).” MPEP 2131 (Rev. 3, Aug. 2005, at p. 2100-76).

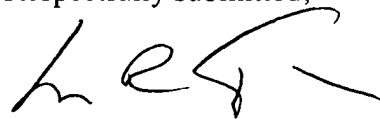
As noted in the Office Action, Stewart is commonly-assigned with the subject application, and therefore is not available as prior art under 35 USC §103(c).

It is believed the dependent claims are allowable in view of the foregoing.

In view of the above, it is believed this application is in condition for allowance, and such a Notice is respectfully solicited.

To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a), to Deposit Account No. 50-1130, under Order No. 10-006, and please credit any excess fees to such deposit account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. R. Turkevich', with a long horizontal stroke extending to the right.

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